

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ELVIN MERCADO)
)
 v.) Civil No. 04-11653-PBS
)
 UNITED STATES OF AMERICA)
)

ASSENTED TO MOTION OF THE UNITED STATES
TO CONTINUE THE HEARING DATE ON DEFENDANT'S
SECOND AMENDED MOTION UNDER 28 U.S.C. § 2255

The United States hereby moves to continue for at least 30 days the hearing date regarding the defendant's second amended motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. The hearing is presently scheduled for December 14, 2006. The defendant, through counsel, has assented to the relief requested herein. As further grounds for this motion, the government states as follows.

On December 1, 2006, the defendant filed its Second Amended Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (the "Second Amended Motion"). In his Second Amended Motion, the defendant raised for the first time the argument that he should be resentenced because his two predicate career offender convictions had recently been vacated in the Lowell District Court. This is an entirely new and different motion than that previously filed, which raised only ineffective assistance of counsel (the current motion also incorporates by reference the ineffective assistance claim). The government requires the additional 30 days to review the facts underlying

the defendant's claims and to prepare a response to the motion that will be helpful for the Court.

For the foregoing reasons, the government requests that the hearing on the Second Amended Motion, currently scheduled for December 14, 2006, be continued for a period of at least 30 days, until on or after January 16, 2007.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /S/ PETER K. LEVITT
PETER K. LEVITT
Assistant U.S. Attorney

December 7, 2006